No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON and other Applicants, members of Alaska Cannery Workers' Union, Local No. 5, and ALASKA CANNERY WORKERS' UNION, LOCAL No. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission, and ALASKA PACKERS ASSOCIATION (a corporation), ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation),

Appellees.

BRIEF FOR APPELLEES UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE AND R. S. BRAGAW, AS MEMBERS OF AND CONSTITUTING SAID COMMISSION.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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(NOTE): Unless otherwise noted italics appearing in this brief are ours.

These appellees accept appellant's "Statement" (Appt's. Br. p. 1), their recital of prior steps, and basis for jurisdiction for this Court on appeal contained in appellant's brief under the heading Pleading and Jurisdiction. (Appt's. Br. p. 2.) Appellant's "Statement of Facts" (Appt's. Br. p. 3) is so mingled with conclusions and argument that the Unemployment Commission feels constrained to make its own Statement of Facts.

STATEMENT OF FACTS.

Appellant Frank L. Aragon and the other individual appellants similarly situated, and hereinafter called claimants or employees, on behalf of whom he brings this action, are members of the Alaska Cannery Workers' Union, Local No. 5, C.I.O., an unincorporated association and labor union with collective bargaining powers, hereinafter referred to as "the Union", of San Francisco, California, which is affiliated with District Council No. 2 Maritime Federation of the Pacific and other interested unions. (Testimony Revel Cayton, Tr. pp. 218-219, and District Court Findings of Fact No. 1.)

At all times pertinent to this appeal the Union was the authorized bargaining agent of the said appellants in conducting negotiations with employers as to terms and conditions of employment. Each of the appellees, Alaska Packers Association, Red Salmon Canning Company and Alaska Salmon Company, hereinafter called the San Francisco Operators or Employers

when referred to collectively, is a corporation which has been for a number of years last past engaged in the fishing industry taking and canning salmon in the Territory of Alaska and having its offices in, hiring most of its men in and shipping its supplies from San Francisco, California. Appellants are and were in 1939 employees of San Francisco operators in said industry.

The fishing industry is seasonal as defined by the Alaska Unemployment Act. (Sec. 3 (c) (1).) Because of the differences in climatic and other conditions and in the time when salmon run the seasons prescribed by the Department of Fisheries and the Unemployment Commission vary in different localities. Karluk is on Kodiak Island and Chignik on the Alaska Peninsula a few miles to the west, both on the Pacific side of the Alaska Peninsula, whereas Bristol Bay is on the northern side of the peninsula and opens into Bering Sea. The Alaska Unemployment Commission has after investigation and hearing determined the longest seasonal periods during which the operations are conducted in said fishing industry in Alaska applicable herein as follows: At Karluk from April 5 to September 5; at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 5. (Benefit Regulation No. 10, Tr. p. 199.)

During the operating season of 1939 and for at least some years before the employers had hired their workers for the fishing and canning season through the Union and under an operating contract with the Union. The 1939 contract contained a provision for

termination by either party upon notice to the other. After the close of the 1939 season this contract was terminated by Alaska Packers Association. (Ex. B, Tr. p. 267.) It seems to have been assumed that it was also terminated by Alaska Salmon Company and Red Salmon Canning Co. (District Court Findings of Fact Nos. 2, 3 and 4.)

The list of names appearing in the transcript, pages 6 to 13 inclusive (Claimant's Ex. No. 1), contain the names of individuals who were employed during the 1939 season at canneries of the San Francisco operators. They are residents of the State of California who expected to work for the San Francisco operators during the 1940 season. Whether they have filed claims for benefits in accordance with Section 6 of the Alaska Unemployment Compensation Law does not appear in the record.

In early March, 1940, negotiations were commenced between the Union as the bargaining agents for the appellants and the Alaska Salmon Industry, Inc., a corporation organized in 1940 for the purpose of handling labor relation matters for appellees and other Pacific Coast operators in the salmon industry of Alaska (Tr. p. 260) and authorized (Ex. 7, Tr. p. 167, and Ex. 9, Tr. p. 170) to represent employer appellees and others. The Union presented to the Alaska Salmon Industry, Inc. in writing its proposed 1940 agreement (Tr. p. 275) which was more favorable to the employees than the San Francisco 1939 agreement. Negotiations were carried on in San Francisco with the Union but certain other affiliated unions (Machin-

ists and Communications Association, et al.) refused to negotiate. (Claimant's Ex. 11, Tr. p. 173.) On or about April 3 at the instance of the Union all negotiations were transferred to Seattle where the unions and employers attempted to negotiate a coastwide contract covering all salmon fishing and canning operation in Alaska, but with the distinct statement by the Union that no agreement would be signed until certain pre-existing difficulties were settled nor until all the unions signed. Accordingly negotiations were transferred to Seattle. At Seattle there were 71 employers (testimony Rendon) other than appellees represented by the Alaska Salmon Industry, Inc. and some time about the first of June the Union reached an agreement (testimony Vincent Rendon, Tr. p. 99) with those 71 employers on a basis approximately the same as the Seattle 1939 agreement, which the San Francisco employers had been willing to adopt, but the Union refused to work for the San Francisco employers on the same basis.

In order to use the prescribed fishing season in Alaska to the greatest advantage the employers must, prior to the opening of the season, procure needed equipment and supplies, and preparation crews, transport them to the site of Alaska operations and prepare their canneries for operation. Until the canneries are ready to run there is no need to employ fishermen or maintain a full staff of cannery workers. Accordingly it is their custom to sail first loaded with supplies and men to put the cannery plants in shape and after the delivery to return the ships to San Francisco and at a

second sailing take fishermen and cannery workers to Alaska; therefore, on April 3 the employers by letter (Ex. I, Tr. p. 325) notified the Union that after certain dates they could not profitably undertake operations in Alaska for the 1940 season and if on or before these dates complete agreements as to working contracts were not made expeditions to Alaska would not be undertaken. (Testimony St. Sure, Tr. pp. 322-337.) These dates were, as to Karluk and Chignik, April 10; if Karluk not operated and Chignik was operated, April 12; as to Bristol Bay, May 3. (Tr. p. 377 and Ex. V, Tr. p. 379.)

The San Francisco employers offered work to the appellants at the wages and on the terms paid to employees doing similar work who were employed by the Seattle employers under the "Seattle 1939" contract. This offer the appellants refused. (Rendon, Tr. p. 38.)

The employers intended to and would have operated their canneries in Alaska at Karluk, Chignik and Bristol Bay (subject to limitations placed upon the catch by the Bureau of Fisheries as to Bristol Bay operations) and would have employed members of the Union in said operations if a satisfactory agreement with the Union could have been reached. No contract was completed and the employers did not operate during the 1940 season. The failure of the employers to operate was due to a labor dispute.

In preparation for their operations in the 1940 season appellee Alaska Packers Association set aside their fastest vessel for the trip and purchased cans, can ends,

lumber, fibre boxes, caterpillar engines, stationary tractor engines, machine tools, piling, lead and linen nets, supplies, and outfitted to the extent of approximately $400,000.00. (Testimony Tichnor, Tr. pp. 530-537.)

The Red Salmon Canning Company refused to charter its vessel used in transporting supplies for the reason that the charterer might not return the vessel in time for its Alaska trips with supplies and men for the cannery and prior to May 3 put the ship in condition for the Bristol Bay cannery service; bought supplies and employed extra men and arranged credit at the bank for the amount of money they might need, bought nets, cans and other machinery. (Testimony Peterson, Tr. pp. 560-565.)

Failure to make a contract with the Unions involved was not the only reason that the Alaska Salmon Company did not operate its cannery at Bristol Bay during the 1940 season, but was a contributing cause.

There was curtailment by the U. S. Bureau of Fisheries of the take of salmon from Bristol Bay, but this had no effect upon the decision of the employers not to operate in 1940.

The differences between the Union and the employers which prevented agreement on a 1940 contract were direct differences as to wage scale and conditions of work (testimony Rendon, Tr. p. 40), and refusal of certain unions to negotiate.

The Commission made the following findings of fact and reasons for decision:

"That all of the claimants-appellees were employees of the employers-respondents during the seasonable canning season as set out in Regulation No. 10 of the Alaska Unemployment Compensation Commission for the year 1939. That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940. That the agents of the claimants-appellees admitted receipt of the notification of such cancellation, and thereafter entered into negotiations for the canning season of 1940.

That this industry is a seasonable (seasonal) industry, recognized as such by this Commission in setting forth in its Regulation No. 10, the dates for which unemployment compensation could be allowed by the Commission. That the claimants-appellees were fully aware of this condition, as were the employers-respondents. That the dates of operation of canneries in the various sections involved in this controversy, as set out in said Regulation 10, which was adopted by the Commission November 6, 1938, are as follows:

Kodiak Island District, which includes all operations on the Karluk River, one season, April 5th to September 25th;

Alaska Peninsula District, which includes all operations at Chignik, one season, April 1st to September 10th; and

Bristol Bay District, which includes all operations in Bristol Bay, one season, May 5th to August 25th.

That following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter.

In the Declaration of the Territorial Public Policy set forth in the first paragraph of the Act creating the Unemployment Compensation Commission, Chapter 4 Extraordinary Session Laws of 1938 as amended by Chapters 1 and 51, Session Laws, 1939, the Legislature of Alaska declares:

> 'The Legislature, therefore declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.'

The question to be decided by this Commission is if the claimants-appellees are entitled to the benefits of unemployment compensation, as provided for by said Act, through no fault of their own.

Conclusion and Decision.

We conclude that the claimants-appellees and the employers-respondents were engaged in a season industry;

That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued * * *" (Tr. pp. 646-648.)

Appellants made no assignments of error directed to the trial Court's finding of fact Nos. 1, 2, 3 and 4. Its remaining findings of fact were as follows:

"5. That negotiations were entered into before the dates of the opening of the season, as prescribed by the regulations of the Alaska Unemployment Compensation Commission, and there was a disagreement between petitioners and the Union and its members and the respondent companies. Demands were made by the Union and its members and by the claimants and petitioners; offers were made by the companies, the respondents, and counterdemands were made, all covering the respective canneries. These demands, offers and counterdemands were all with reference to the terms and conditions of employment, and especially with reference to the wage scales for the 1940 season, and there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

6. That in order to operate salmon canneries in Alaska, it is necessary for the operators, the

companies, to make preparations sometime in advance to sign on its employes, prepare its ships, purchase and load supplies and sail to the canneries in Alaska in time to make all preparations there and be on the ground when the fishing season opens, as prescribed by law.

7. That after the labor dispute as hereinabove mentioned had continued for some time and no prospect of settlement was in sight, the employers notified the claimants, petitioners and the Union, that if no contract were concluded before April 10 for the Karluk operations, before April 12th for the Chiknik operations and before May 3rd for the Bristol Bay operations, it would be impossible to operate and no operations could be undertaken at the canning plants at Chignik, Karluk and Bristol Bay, and the court finds that from the nature of these operations and the requisite nature of the preparations required, no such operations could be undertaken unless agreements were reached before those dates.

8. That no agreement was reached within the time set by the employment for the respective plants, and no agreement was reached within time for the opening of the fishing and canning season as prescribed by the regulations of the Department of Interior and as defined by the regulations of the Unemployment Compensation Commission of Alaska, and no operations could be carried on during the 1940 season by the respondent companies at their canneries at Chignik, Karluk and various points in Bristol Bay.

9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was

in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska.

11. That the conclusions of law and the decisions of the Alaska Unemployment Compensation Commission were amply supported by the findings and by the evidence, and the decision was proper and in accordance with the findings and evidence, and the findings were sufficient to sustain the decision of the Commission and no other findings were necessary to a determination of the question involved, and such findings and decision were made according to law.

12. That the evidence does not support the contention of claimants that the Alaska Salmon Company, one of respondents, would not have operated in 1940 regardless of the outcome of the labor dispute and regardless of whether or not there had been or had not been an agreement made with claimants.

13. That petitioners made no objections to the findings of the Commission and did not appeal to

the Commission from its decision within the time and in the manner required by law, and that there was complete absence of fraud, and therefore, the findings of the Commission are conclusive."

ARGUMENT.

On page three of appellants' brief they state the question presented on this appeal to be, "Were appellants unemployed during the 1940 Alaska Salmon season because of a labor dispute in active progress at the establishment at which they were last employed within the meaning of Section 5(d) of the Act?" We think that statement not entirely accurate, that it is a little too broad.

We think the questions to be decided in this Court are: Is there substantial evidence to support the findings of fact of the Commission and the District Court, and, can it be said as a matter of law that the Commission and the District Court were in error in finding that appellants' unemployment was due to a labor dispute which was in active progress during the week for which appellants claim compensation?

Error will not be presumed.

Appellants "invite particular attention to the decision of referee Roden who, as tryer of the facts, had the opportunity to hear witnesses at first hand and whose findings should therefore be entitled to great weight".

This Court will be guided by the statute which makes conclusive, in the absence of fraud, if supported by evidence, the findings of fact of the Commission, not the Referee. Section 6(i) (Appendix p. v). The unemployment compensation acts of every state contain provisions similar in effect and in most cases exactly the same as Section 6(i) supra. They are given effect by the Courts construing those acts. In a late case (January, 1944) a claim for unemployment compensation was denied by the Indiana Board of Review which found that the claimant left his work voluntarily without good cause. After intermediate steps the case reached the Indiana Court of Appeals which said, Sec. 52-1508 (1) provides " 'any decision of the Review Board shall be conclusive and binding as to all questions of fact'. Therefore this Court will not weigh the evidence and will consider only that evidence most favorable to the decision of the board. (Citations.)" *White v. Review Board* (Ind.), 52 N. E. (2d) 500, 501. To the same effect are *Bryant v. Hayden Coal Co.* (1943) (Colo.), 137 Pac. (2d) 417, 419; *In re North River Logging Co.,* 15 Wash. (2d) 204, 130 Pac. (2d) 64 [1]; *Layman v. Unemployment Compensation Commission et al.,* 167 Ore. 379, 117 Pac. (2d) 974, 977, 136 A.L.R. Ann. 1468, 1472; *Wolfe v. Iowa Unemployment Compensation Commission* (Iowa), 7 N. W. (2d) 799, 801 [3]; *M.F.A. Milling Co. v. Unemployment Compensation Commission,* 350 Mo. 1102, 169 S. W. (2d) 929, 931 [1, 2]. Our examination has revealed no case to the contrary.

CONSTRUCTION OF ALASKA UNEMPLOYMENT COMPENSATION LAW.

As a foundation and support to much of their argument appellants rely upon an alleged rule of construction set forth in Specification of Error XII, 3, D. (Br. p. 23) and paragraph "A" under "Argument" (Br. p. 27), as follows:

> "The Act, being remedial in nature is to be liberally construed and with a view toward awarding rather than denying benefits."

This is evidently an application of appellants' idea of the "object in mind of the legislature" to the recognized canon of construction, with which this appellee has no quarrel, found in 59 C. J. 1105, Sec. 656, as follows:

> "Laws enacted in the interest of public welfare, for the protection of human life or the preservation of health—or providing remedies against either public or private wrongs, should be liberally construed with a view to promote the object in the mind of the legislature."

Appellee commission does not agree that the object in the mind of the legislature was to award rather than deny benefits, nor does it agree as to the effect to be given to a canon of statutory construction. The appellants claim for the rule as they state it an effect both as to the law and the facts more powerful than that of the presumption of innocence. On page 28 of their brief, after reciting four questions of fact which they say are necessary conditions of disqualification under Sec. 5(d), appellants say, "If there is

any doubt on any one of these points it must be resolved in favor of claimant'' and on page 40 they say, ''*Any* doubt as to the reason for unemployment must be resolved in favor of appellants * * *''.

Even the presumption of innocence requires a *reasonable* doubt to make it effective.

The Commission contends that where the language of the law is plain there is no room for construction; that where there is ambiguity there are canons of construction other than that applied by the appellants to be observed in construing the Alaska Act; that the problems before and the objects in the mind of the legislature were not so simple as appellants indicate, and in ascertaining them the Court may resort to more than one test or canon.

Support is found for this contention in the language of the Supreme Court of the United States in the decision of *Russell Motor Car Company v. United States,* 261 U.S. 514, 43 S.Ct. 428, 67 L.ed. 778, 782, as follows:

> ''Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as this court has many times held, except in the domain of ambiguity. (Citations.) They may not be used to create, but only to remove doubt. Id. Moreover in cases of ambiguity, the rule here relied upon is not exclusive. The problem may be submitted to all appropriate and reasonable tests, of which 'noscitur a sociis' is one.'' Id.

Since question is raised as to the object in the mind of the legislature and as to the effect and meaning of certain words appearing in Section 5 Subsection (d) of the act, particularly the term "labor dispute" and "in active progress" we invite attention to the amendments that have been made in that subsection. There is ample authority for this method of ascertaining the intent of the legislature.

CONSTRUCTION AS INDICATED BY AMENDMENTS TO SUBSECTION 5(d).

The first Alaska Unemployment Compensation Law was enacted by the 1937 legislature and amended by that of 1939. An amendment of importance in this case changed the provisions of Sec. 5 (d) supra. Prior to the amendment it read:

> "Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits: * * * (d) for any week with respect to which the Commission finds that his total or partial unemployment is due to *a stoppage of work* which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed; * * *".

Under the statute as then written *disqualification* for benefits resulted only when, in addition to a labor dispute there was a stoppage of work. The legislature evidently considered the existing disqualification too narrow and in 1939 broadened it by striking out the words "stoppage of work" and adding the words

italicized below. In 1940 the amended subdivision read as follows:

> "Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits * * * (d) for any week with respect to which the commission finds that his * * * unemployment is due to a labor dispute *which is in active progress* at the factory, establishment or other premises at which he is or was last employed; *provided that such disqualification shall not exceed the eight* weeks immediately following the beginning of such dispute; * * *".

The words "in active progress" were inserted to protect the workman from disqualification if the labor dispute were settled by such an agreement as prevented the employment of the claimant workman, as, for instance, where the settlement resulted in a closed shop, the applicant being non-union, or, in recognition of a union of which claimant was not a member, or any other termination which left the claimant unemployed *through no fault of his own.* To prevent too great a hardship as the result of a continuing dispute the eight weeks' limitation of disqualification was enacted.

CONSTRUCTION AS INDICATED BY LANGUAGE OF THE ACT.

Purpose to protect employers against the use of the benefit fund as a weapon appears in the preamble, in the wording of Sections 4 and 5 and other places in the act, and Mr. Justice Day tells us in *U. S. v. Standard Brewery, Inc.,* 251 U.S. 210, 64 L.ed. 229, 234,

> "Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain it is the duty of the courts to enforce the law as written, provided it is within the constitutional authority of the legislative body which passed it."

The object of the Alaska Unemployment Compensation Law is clearly stated in "Declaration of Territorial & Public Policy" thus:

> "Involuntary unemployment is * * * a subject * * * which requires appropriate action * * * to prevent its spread and lighten its burden * * *".
>
> "* * * the public good and the general welfare of the citizens of this Territory require the enactment of this measure * * * for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

The means appropriate to accomplish those objects are stated generally in the following words:

> "This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds * * * from which benefits may be paid during periods of unemployment, * * *".

Employers are not encouraged to provide stable employment nor is the spread of unemployment prevented by allowing benefit funds to be used to support labor disputes resulting in unemployment regardless of whether they are accompanied by picketing, lockout or voluntary refusal to work. There is nothing

in the preamble that justifies the assumption that the object of the legislature was to "pay, and not deny benefits."

Passing to consideration of Section 4, "Benefit Eligibility Conditions." The use of the word "conditions" instead of "provisions" or "Eligibility for Benefits" as some acts entitle the corresponding section, points to a strict construction of the section, which continues,

> "An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that: * * *".

The use of the restrictive and exclusive word "only" before "if the Commission finds" and applicable to all the benefit eligibility provisions shows definitely that the Alaska legislature intended a strict compliance with and construction of those conditions. No more apt arrangement or choice of words to indicate that purpose could have been chosen.

Also the Commission is given equitable jurisdiction "by regulation to waive or alter the requirements of this subsection", (a), if "compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act." This authority to relieve is, however, limited to the requirements of Section 4(a), which deals with the mechanics of showing that the claimant's unemployment is involuntary. Even the Commission may not relax the strict requirements of the remaining four subsections of Section 4, one of which is "(c) He is able to work and is available for work."

On the other hand Section 5 "Disqualification for Benefits" contains no such indications of a requirement that construction be strict as appears in Section 4. The object of Section 5 is to disqualify claimants who are not "unemployed through no fault of their own". It is to conserve the fund, protect the tax payer and limit the use of the funds to those strictly entitled. We contend it should be liberally construed to accomplish those objects.

In construing this law it should be kept in mind that this is a taxing act. The legislature while imposing that tax never lost sight of the legislative object to encourage the employer. In Section 7(c) (appendix p. vi), the Commission was charged with the duty of *equitably* rating the employment risk and establishing a system and fixing the contribution to the fund of each employer so as to "encourage stabilization of employment".

In *Hassett v. Welch,* 303 U.S. 303, 82 L. ed. 858, the Supreme Court pointed out and applied the rule that "if a doubt exists as to the construction of a taxing statute the doubt should be resolved in favor of the taxpayer."

The same Court speaking in an appeal involving the constitutionality of the Alabama Unemployment Compensation Act said:

> "* * * We see no reason to doubt that the present statute is an exertion of the taxing power to the State."
>
> *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 494, 81 L. ed. 1245, 1252.

It may be argued that the canon quoted from *Hassett v. Welch,* supra, is applicable only when the validity of the tax imposed upon employers is in question. There would be force to such an argument. However, we are here considering the construction to be given to provisions of the act relating to expenditures and believe there is such a connection between taxation, conservation of and allowance of benefits from the fund as warrants taking into account the canon as to taxing statutes. This relationship between the tax payer and the benefit recipient is recognized by the Courts in cases involving a construction of the law with regard to the eligibility of claimants.

Having under consideration the question of whether a milk and cream hauler was an independent contractor and therefore not entitled to unemployment compensation benefits, or an employee and therefore entitled, the District Court of Olmstead County Third District of Minnesota (6-30-'43) said:

> "The Employment and Security Act is remedial and humanitarian in its nature and there is a natural temptation to extend its benefits as far as possible. There is a temptation to say that a milk and cream hauler is engaged in work of such menial character or humble industrial status that he should somehow be brought within the purview of the law. The statute, however, is explicit in this regard. Its benefits are *strictly limited.* An independent contractor does not participate, no matter how simple or menial his work may be."
>
> *In the Matter of Rochester Dairy Company.*
> From P-H,U.I.S. Minn. § 29564.

A Florida Court said:

> "In this holding (Recognition that status of independent contractor is determined by the common law and that claimant is not an employee under the act) we do not lose sight of the benevolent purpose of the Unemployment Compensation Act, but beneficence is not accomplished by the exercise of a 'rob Peter to pay Paul' philosophy. Beneficence has to do with the one who pays as well as the one who is paid * * *".
>
> *Gentile Bros. Co. v. Florida Industrial Commission,* Prentice-Hall Unemployment Insurance Service, Fla. §29596.

In *Chrysler Corporation v. Smith,* 297 Mich. 438, 298 N. W. 87, 135 A. L. R. Ann. 900, 908, an unemployment compensation case, in answer to the claimants' contention that the Chrysler Co. had no right to appear and contest the claimant's right to awards, the Supreme Court of Michigan said:

> "This requires but short answer. As a contributor to the fund having an interest in its proper disbursement, it was the right of the corporation, if not its duty, to, see that the purpose and full integrity of the fund was preserved."

In the same case the Court quoted with approval from the Appeal Board decision, the following:

> "This fund (Unemployment Compensation Fund) is in many respects a public trust fund and all who have custody of or control over it are in reality trustees who must at all times administer the fund in *strict* compliance with the provisions of the law. None of the money accumulated in

> this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike."

The Supreme Court of Tennessee denying a motion to dismiss an appeal because the Commissioner was not an interested party said:

> "Furthermore, under section 9 of the Act the Commissioner administers the unemployment fund and is a trustee thereof".
>
> *Queener v. Magnet Mills,* 179 Tenn. 416, 167 So. (2d) 1.

Under the teaching of these decisions certainly the Alaska Unemployment Commission, as a trustee charged with the duty of administering this fund, has an obligation to see that the purpose and full integrity of the Alaska Benefit Fund was and is preserved, and that it be expended only in *strict compliance* with the provisions of the law. No construction of the law or the facts should be indulged in to defeat that obligation.

This appellee believes that the following quotation correctly expresses the intent of the Alaska legislature as to those who bring about their own unemployment and that any construction applied to any of the provisions of Sections 4 and 5 should be such as will support and make effective that intent.

The Supreme Court of Oklahoma in *Board of Review v. Mid-Continent Petroleum Corporation* (1934), Oklahoma, 141 Pac. (2d) 69, 73, speaking by Vice

Chief Justice Gibson, in an action to review an order of the Board of Review awarding unemployment compensation, quotes, with approval, the following holding of the Appellate Court of Indiana in *Knox Consolidated Coal Corporation v. Review Board,* 43 N.E. (2d) 1019:

> "The purpose of the Employment Security Act is to promote the general welfare by protecting the homes and families of those who become unemployed through no fault of their own, and the section providing that an individual shall be ineligible for benefits for any week with respect to which unemployment is due to a stoppage of work which exists because of a labor dispute at the factory at which he was last employed *intends to withhold benefits of the act from those who bring about their own unemployment by bringing about or participating in a labor dispute.*"

DEFINITION OF THE TERM "LABOR DISPUTE".

Appellants contend that the negotiations which the evidence shows were conducted between the Union and the employers and the conditions accompanying those negotiations did not constitute a labor dispute within the meaning of the Alaska Compensation Act. (Paragraph "C", Appt's. Br. p. 29.) They support their contention by this statement: "Generally there is no 'labor dispute' within the meaning of the Unemployment Compensation Act unless there is a strike or stoppage or leaving of employment or a presently existing employer-employee relationship which is terminated.* * * "

"Labor Dispute" is defined in the National Labor Relations Act, 29 U.S.C.A. Sec. 152(9) as follows:

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The definition in the Norris-LaGuardia Act, 29 U.S.C.A. Sec. 113 (c), is the same except that it omits the word tenure.

Among the states only Alabama has included a definition of the term "Labor Dispute" in its unemployment compensation act. That definition is in the exact words of the National Labor Relations Act, supra.

These definitions if applicable in themselves answer and refute appellants' contention as to necessity of a "strike or stoppage or leaving of employment or a presently existing employer-employee relationship which is terminated." Of course we admit that each claimant must be unemployed before he can receive benefits, but not that a labor dispute cannot exist without termination of employment.

We are not interested in the meaning of the term in unemployment acts "generally". We are interested particularly in the meaning of the term in Alaska's 1939 Act, section 5(d) which does not contain the phrase "stoppage of work" nor the word "strike"

one of which appears in the corresponding section of approximately 32 states or territories.

Appellants argue that the definitions of a labor dispute in the Wagner Act and in the Norris-LaGuardia Act are not applicable in unemployment cases for reasons set out in appellant's brief at page 29. That argument was met in *Barnes v. Hall* (1941), 285 Ky. 160, 146 S. W. (2d) 929, 935 (an unemployment compensation case), the Court saying:

> "(1) It may be argued that the definitions above quoted are applicable only to situations covered by the particular acts in which the definitions appear, but since the Workmen's Unemployment Compensation Act (1938) by the mandatory requirements of the Social Security Act, 42 U.S.C.A. sec. 1103, contains the express provision that an otherwise ineligible worker shall not be denied benefits upon his refusal to accept work 'if the position offered is vacant due directly to a strike, lock-out or other dispute, Sec. 4748g-9 (b) (3), it is at least a reasonable presumption in the absence of a definition in the Kentucky Act that our Legislature intended to use the term 'labor dispute' wherever it appeared in section 4748g-9 in the same sense that it was employed in the National Labor Relations Act and the Norris-LaGuardia Act, which were enacted prior to the Federal Social Security Act.* * *
>
> * * * * * * *
>
> If it should be assumed that a labor dispute within the meaning of the act could exist only between employer and employee, an assumption not supported by reason or any implication contained in the act or by definitions found in social security legislation * * * "

The Alaska Unemployment Compensation Law contains the same provisions as those referred to above in the Kentucky statute. In addition Section 12, appendix p. vii, includes a direct statement of acceptance of the provisions of the Wagner-Peyser Act.

The Supreme Court of Colorado in *Sandoval v. Industrial Commission* (another unemployment compensation case), 110 Col. 108, 130 Pac. (2d) 930, 935 said:

> "The definition of a labor dispute contained in the National Labor Relations Act, which doubtless may be accepted as a proper definition of the term 'labor dispute' where used in unemployment compensation acts is as follows * * *"

In *Dallas Fuel Co. v. Horne* (an unemployment compensation case), 230 Ia. 1141, 300 N. W. 305, Justice Wennerstrum, after quoting the definition of "labor dispute" contained in the National Labor Relations Act, supra, says:

> "With this definition as a guide it is the conclusion of this court * * *. It is true that the above definition is found in a federal statute which relates to certain labor relations over which the federal government has jurisdiction. However, we are of the opinion that the provisions of this definition are applicable to our present problem. * * *
>
> It is our conclusion that where action is taken by either a labor organization or an employer that has a bearing upon a controversy as to wages or conditions of employment, a labor dispute has developed as stated in the definition." (Title 29, supra.) "This is true 'regardless of whether the

disputants stand in the proximate relation of employer and employee.' ''

In *Department of Industrial Relations v. Pesnell,* 29 Ala. App. 528, 199 So. 720 (an unemployment compensation case), the Supreme Court of Alabama said in words particularly applicable to the case at bar:

> "Our statute merely says the words 'labor dispute' without further definition and with no indication whatever a strike or lock-out must result. A dispute is a verbal controversy. 'To contend in argument, discuss, evade, often to argue irritably, wrangle.' Webster's New International Dictionary, 2nd Edition. There appears, therefore, no foundation for the argument that the words 'labor dispute' as used in the statute are to be interpreted as meaning a verbal controversy resulting in a strike or lock-out."

> "Labor dispute includes all controversies between employers and employees concerning the employment or non-employment of any workers whether employees of the employer with whom the dispute arose or not."

> C.C.H. Wash. P 1980.02, App. Trib. Dec. No. A-271 (1940).

The cases cited by the appellants to support their position that because "there was no presently existing employer-employee relationship at the commencement of the 1940 season there could be no labor dispute" (Appt's. Br. p. 30) are readily distinguished from the case at bar.

In Pa. Unemployment Commission Appeal (Appt's. Br. p. 30) there was a labor dispute, and while that

labor dispute was being negotiated by the participants therein there was an agreement between the Union and the employers that during the time of the negotiations the employers should be allowed to prepare a new vein for future work. The claimant was employed in preparing the new vein. When the Union and the employers reached an agreement the dispute was settled. The preparation work upon which claimant was employed had been finished. The miners took over and claimant became unemployed because he had completed his work. His unemployment was plainly not due to the labor dispute; it was due to the completion of his contract work.

In *Graham and State Unemployment Commission of Oregon* (Appt's. Br. p. 31) there was a jurisdictional labor dispute between the C.I.O. and the A. F. of L. The labor dispute was ended by the agreement between the A. F. of L. and the employers. The employers discharged the C.I.O. employees in accordance with their agreement with the A. F. of L. The C.I.O. employees applied for benefits and the Court very properly held that their unemployment was not due to a labor dispute in active progress (the wording of the Oregon law). Those claimants were unemployed through no fault of their own. That case has no bearing here except as will be noted hereafter with relation to the termination of a labor dispute.

The Alaska law negatives the necessity of an employer-employee relationship as an attribute to a labor dispute disqualification. Section 5(d) does not say "an employee shall be disqualified", which would

be the natural and appropriate language if employer-employee relationship were necessary to the labor dispute; it says "an individual" shall be disqualified for benefits whose *unemployment* is due to a labor dispute at the premises * * * where he is or "was last employed". The phrase "was last employed" is inconsistent with the "present employer-employee relationship" which appellants deem necessary to a labor dispute disqualification.

We think it is shown by the authorities and the reasoning upon which they are based that employer-employee relationship was not necessary to comply with our statute as to the disqualification because of a labor dispute. But it is to be borne in mind that this was a seasonal industry and these appellants were last employed by the appellees. They expected to be re-employed if agreement could be reached as to terms of employment. The mere fact that their contract, spoken of in the record as "San Francisco 1939", had expired does not necessarily mean that the employee relationship had ceased. There was a controversy as to terms and conditions of employment. None of these appellants had been discharged and the employers were ready to put them to work. If it were necessary, the Court could well find that the employer-employee relationship still existed although the season of unemployment prevented work from actually being carried on. The situation was as if during vacation without pay an employee came to his employer and demanded increased wages and the employer said he couldn't afford to increase the wages

and on the contrary would have to decrease them. The employer-employee relationship would not cease by reason of either the demand or refusal.

In *Barnes v. Hall,* supra (one of the coal mining cases), there existed a condition almost exactly parallel to the case at bar. The Union contract with the mine owners had expired at midnight of March 31, 1939, and, after some negotiations, mining work in the mine was stopped pending settlement of the labor dispute between the Union, as negotiator for the claimant, and the employers. The claimant, Hall, alleged that the miners were not on a strike but had been locked out by the employers and, therefore, that his unemployment was not occasioned by a labor dispute within the meaning of the Kentucky Unemployment Compensation Act. The Court said [2], page 936:

> "If it should be assumed that a labor dispute within the meaning of the Act could exist only between employer and employee,—an assumption not supported by reason of any limitation contained in the Act, or by definitions found in social security legislation,—the fact remains that there is no evidence in this record that the contract which expired on March 31, 1939, was a contract of employment or that its expiration terminated the relationship of employer and employee theretofore existing between the appellants and the miners employed by them. The contract was not introduced in evidence and the facts shown merely indicate that the agreement regulated the wages, hours, the privileges of those

members of the union whom appellants have theretofore employed, or who might thereafter be engaged, and who in turn as individuals were privileged to terminate or renew their respective employments at will."

Appellants' brief (p. 32) cites the Ohio case of *United States Coal Company v. Unemployment Compensation Board of Review.* Very fairly they point out that disqualification under the Ohio statute exists only where there is a "strike". For that reason the case is not applicable here. Furthermore, that opinion was criticized in *Sandoval v. Industrial Commission.* The Colorado Court in declining to follow its reasoning, said:

> "The Ohio statute is similar to our Colorado law, in that compensation is not payable if the unemployment is due to a strike. The case is authority for claimants' contention, but the opinion is based, as we think, on the fallacious assumption that in the absence of a contractual obligation to work, and to employ for contractually specified wages and hours and under contractually specified conditions, there can be no strike. That such was the court's view is indicated by the following excerpt from the opinion:
>
> 'We find this definition of "strike" in Baldwin's Century Edition of Bouvier's Law Dictionary, page 1140, to-wit:
>
> ' "A combined effort by workmen to obtain higher wages or other concessions from their employer by stopping work at a preconcerted time."

'The facts in the instant case do not bring the acts of these employees within this definition, which definition we regard as excellent. Here, there was no combined effort to stop work at a preconcerted time. There was simply a conference attempting to work out an agreement between the interested parties.

'The only contract existing between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligation.' " (This is the paragraph quoted by appellants.)

The *Sandoval* case continues:

"[2] The definition of a strike as given in Restatement of the Law, Torts, section 797, quoted by claimants in their brief, is as follows: 'A strike is a concerted refusal by employees to do any work for their employer, or to work at their customary rate of speed, until the object of the strike is attained, that is, until the employer grants the concession demanded. * * *'

This definition emphasizes as the essential of a strike the concerted refusal of employees to work for their employer, rather than the concerted cessation of work. It is more comprehensive than the definition quoted in the Ohio court's opinion, and we think is applicable to the present situation. While there may have been no preconcert in the cessation of work, the record before us does disclose a concerted refusal to work in the interim pending consummation of

the Appalachian Agreement until certain concessions during such interim were obtained.

We are not persuaded by the reasoning of the Ohio Court of the correctness of its decision."

* * * * * * *

"A concerted refusal to work, or a concerted cessation of work in and of itself under circumstances such as are presented in this case, is but the exercise of a right and violates no contractual obligation the men owe to the operators. A refusal to employ under such circumstances violates no contractual obligation the operators owe to the men. *It is not necessary, however, that there be such contractual obligations in order that a strike exist.* While the men are unemployed, expecting to return to work, and while the operators had closed their mines expecting, however, to reopen them and reemploy the men, an actual employer-employee relationship did not exist; but neither was their relationship the same as that of men seeking employment from and negotiating for terms with operators between which and them an actual employer-employee relationship had never existed. As near as the relationship that did exist can be described, it was a suspended employer-employee relationship and recognized by both parties as such."

Sandoval v. Industrial Commission, supra, p. 935.

We believe that there was an actual employer-employee relationship which was not destroyed either by the termination of the 1939 agreement or by the seasonal period of unemployment; but, in any case, the

suspended employer-employee relationship existed and under the reasoning of the *Sandoval* case it would support a strike.

Quite in line with the reasoning of the above cases appellant Unemployment Commission contends that if a strike be necessary to support their denial of benefits to appellants the evidence shows that appellants struck. Whaley, Young, Acosta and Cayton in answer to leading questions testified that there was no strike. That neither the Union nor the Council declared or authorized a strike. That there was no picket line. But those answers were either conclusions or directed to evidence of a strike. A picket line is only evidence of a strike. A strike can exist without an order of a Union or Council. The testimony leaves no escape from the fact that the appellants were in concert demanding from the employers an agreement concerning conditions and wages which they had submitted to the employers in March, 1940. (Respondents' Ex. G, Tr. p. 275.) That agreement was refused by the employers who offered employment according to the terms of the "1939 Seattle Agreement" (Claimants' Ex. No. 3-A, Tr. p. 41), which offer was refused by the appellants, who, acting together as a Union, refused to work until their demands were met. Mr. John W. Acosta, a member of the 1940 negotiating committee, testified (Tr. p. 189) in response to Mr. Madison's questions,

> "We used the 1939 San Francisco agreement as a basis for agreement. It all depends on the companies' answer, and we didn't intend to lose absolutely nothing from the 1939 agreement.

Q. You wanted to get at least 1939 (San Francisco)?

A. Well, it is reasonable to understand. An agreement is based upon certain things we gained before, and we are asking certain things in addition to that. But it was to the discretion of the Company to agree we would get it.

Q. In other words, you figured that each year what you get you are at least going to get that next year, and maybe something more?

A. Well, the general idea of the members is when we signed an agreement with the Company for 1939 there was a general understanding that that was the starting point for future negotiations.

Q. Nothing less than that?

A. Naturally.

Q. And so, do I understand that you were willing to, always willing, to go on 1939 and not get anything more?

A. Of course, we always want some more.

Q. Always want some more?

A. Naturally.

Q. Did you ask for more?

A. Naturally, the agreement calls for it. You read the agreement, I suppose."

Testimony of Revels Cayton, secretary of District Counsel No. 2, Maritime Federation of the Pacific, who acted as negotiator and coordinator, who had "his finger tips on the general pulse of the thing (negotiations) more than any one individual" (Tr. p. 240), brings out in his recross examination by Mr. Madison the concerted nature and plan of the Unions (Tr. p. 251):

"Q. It is a fact isn't it, in these negotiations all the members of the Maritime Federation have a definite understanding and agreement that one Union won't sign up until they are all satisfied to sign up?

A. Yes. But you can't take it——

Q. (interrupting). Is that a fact or not?

A. The Unions before any one signed(s) try to reach an accord generally. And the factors as to what makes them reach an accord is the thing I am stressing here and which can't be underestimated.

Q. The fact of the matter is, isn't it, you have always taken, the Maritime Federation has always taken the position one Union won't sign up until all members of the American Federation are ready to sign up?

A. We sign jointly.

Q. And you advise the packers to that effect?

A. Yes. And the very fact we do this would in this case be a safeguard for the two big Unions because, once they are ready to sign, then they would be able to move as a group and that would mean pressure would be on all the smaller ones to come in. And Unions like A.C.A. and Radio Operators are continually quarrelling because they say, 'We are one of the small Unions. When the big Unions sign up we have pressure on us.' * * * (Tr. p. 253, condensed.)

A. The Cannery Workers won't sign until everybody is ready to sign—neither will the Fishermen. No one will sign without the other. Nobody will sign until each Union is ready to sign."

This was during April of 1940. The employers were ready to sail to the Alaska fishing and canning grounds at the usual sailing times and proceed with operations there. They needed workers; they offered the same wages and terms that had existed the year before in the same industry for workers leaving Seattle. The workers, represented by their Unions, demanded more wages and better conditions than they had had the previous year, and to enforce their collective demands refused to work. Under the definition from the Restatement of the Law, quoted in the *Sandoval* case, supra, and under the dictionary definitions quoted and applied in the *Bledsoe* and *North River Logging* cases, supra, the concerted refusal of the appellants to work constituted both a labor dispute and a strike. Appellants were on a strike as effectively as if they had put out pickets and their Union had passed resolutions, and their succeeding unemployment was directly due to that labor dispute and/or strike.

THE QUESTIONS "WAS THERE A LABOR DISPUTE IN ACTIVE PROGRESS" AND "WAS CLAIMANTS' UNEMPLOYMENT DUE TO THAT DISPUTE" ARE QUESTIONS OF FACT, TO BE DETERMINED BY THE COMMISSION.

In an exhaustive study of the provisions of the South Carolina Unemployment Compensation law and its construction the Supreme Court of South Carolina, after determining that the Commission had before it evidence which would justify its finding that a

labor dispute was in active progress, stated as one of the questions to be determined:

"1. Was the finding by the Commission that a labor dispute existed at the Hampton Division, Pacific Mills, a finding of fact by the Commission that could not be disturbed by the Court on appeal?" (p. 869.)

In deciding this question the Court said (p. 871):

"Section 5 of the Act provides in part:

'An individual shall be designated for benefits:

(d) For any week with respect to which the commission finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory * * *'.

It is obvious, therefore, that it was not the intent of the Legislature to give the courts the right to determine whether a labor dispute existed, for under Section 5 of the act this right is patently given to the commission whose duty it is to determine by testimony and the evidence in each case whether certain facts existed among them whether or not a labor dispute existed, as a matter of fact. Accordingly in the instant case the commission has determined that a labor dispute did exist at the time and place under consideration and has so declared in its findings; and by the express provisions of the Act, such findings are final just as the findings of a petit jury on the facts are final. Neither the Circuit Court nor this court can interfere with those findings, * * *"

"We believe that under the foregoing holding of this court, *the question as to whether a labor*

*dispute existed in this case was a factual issue to be determined by the Commission. * * *"*.

"Just as a labor dispute is a condition of fact under the statute, so is the issue as to whether the claimants' employment was directly due to it".

Johnson v. Pratt, 200 S.C. 315, 20 S.E. (2d) 865, 871.

In the above cited case the Court also determined (citing from the syllabus) that,

"The Unemployment Compensation Commission, in its statutory authority to hear and determine cases arising under the Unemployment Compensation Law, is analogous to the Industrial Commission in its right to hear and determine matters arising under the Compensation Act."

The Supreme Court of the United States has very recently discussed the weight to be given to administrative agency construction of the meaning of statutory terms used in the acts which they administer. Having under consideration the meaning of the term "employee" as used in the National Labor Relations Act, the Court said:

"It is not necessary in this case to make a completely definitive limitation around the term 'employee'. *That task has been assigned primarily to the agency created by Congress to administer the Act * * *"*

"In making that body's (administrative agency) determinations as to the facts in these matters conclusive, if supported by evidence, Congress entrusted to it primarily the decision whether the evidence establishes the material

facts. Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's when the latter have support in the record. (Citations.) Undoubtedly question of statutory interpretation, especially when arising in the first instance in judicial proceedings are for the courts to resolve, giving appropriate weight to those whose special duty is to administer the questioned statute. (Citations.) *But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited.* Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act that a man is not a 'member of a crew' (citation), or that he was injured 'in the course of employment' (citation), and the Federal Communications Commission's determination that one company is under the 'control' of another (citation), the Board's determination that specified persons are 'employed' under this act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

National Labor Relations Board v. Hearst Publications (Apr. 24, 1944), (U.S.), 88 L. ed. 824, 834-35 (Advance Sheets No. 13).

We contend that the finding of the Alaska Commission that the appellants were disqualified because their unemployment was due to a labor dispute in active progress at the establishment where they were last employed is supported by substantial evidence and is binding on this Court.

THE APPELLANTS WERE NOT SUFFERERS FROM "INVOLUNTARY UNEMPLOYMENT" NOR WERE THEY "UNEMPLOYED THROUGH NO FAULT OF THEIR OWN" WITHIN THE MEANING OF THOSE WORDS IN THE ALASKA UNEMPLOYMENT LAW.

Construing the phrase "no fault of their own" found in the preamble, and the term "labor dispute" occurring in their disqualification section, the Supreme Court of the State of Indiana says:

> "What is meant by the term 'labor dispute' has been the subject of our inquiry and to determine the question we have looked to the entire act and its purposes. The declared purpose quoted above is to provide benefits for persons unemployed through no fault of their own and to encourage stabilization in employment.
>
> "Appellees say that the word 'fault' means 'something worthy of censure'. We cannot believe that the word as used in the statute was intended to have such a meaning. We cannot believe that it was intended that, under war-time conditions such as now exist, a person with regular employment with which he has been satisfied may *voluntarily* quit work and go forth seeking higher pay in a munitions factory, and make claim for and receive compensation benefits until he finds a position more to his liking or decides to return to his previous employment. It must be concluded that such unemployment did not occur through no fault of his own. Thus 'fault' must be construed as meaning failure or volition. This construction is consistent with the provision that there shall be no benefits paid if unemployment is due to a stoppage of work because of a labor dispute. It is perfectly legal for employees to contend for better wages and working conditions and

to refuse work if their demands are not complied with, and it cannot legally be said that such action is worthy of censure or that it constitutes wrongdoing. It must be concluded that the purpose of the act was to provide benefits to those who were *involuntarily* out of employment, and not to finance those who were willingly and deliberately refusing to work because of a failure of their employers to accede to demands for higher wages.

"We have here in the facts a situation in which the employees refused to continue in their regular employment unless and until the employer agreed that their wages should be based upon a wage scale, the terms of which were to be determined by future agreement then under negotiation. Whether the International Union, then negotiating with the Appalachian Operators, was the bargaining agent of the local union is immaterial. They sought to bargain for themselves under the direction of the International Union, and proposed that they would continue work only upon condition that their pay should be determined by an agreement to be reached by the International Union and the Appalachian Operators. Here was a disagreement between the employer and the employees as a whole as to wages; a demand by employees for new and different terms, and a refusal of the employer to comply, and a refusal of the employees to work as a consequence. It was a controversy. This was a strike in the ordinary meaning of the word. Webster defines a 'strike' as: 'Act of quitting work; specif., such an act done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer; a stopping of work by workmen in order to obtain or resist a

change in conditions of employment.' 'To quit work in order to obtain, or resist, a change in conditions of employment.' Webster's New International Dictionary, Second Edition. Strikes are generally considered as coercive. This strike was the result of disagreement after negotiations about wages and working conditions. The fact that the contract under which the employees had been working had expired is of no importance. They were unemployed because of their refusal of an offer of work for wages and under conditions identical with those provided in their expired contract.

"While we have not before been called upon to consider this statute, the question is not new, and has been passed upon in many states where the statutes are substantially identical, and in cases in which the facts are substantially identical with those of the case at bar. We find strong support for the conclusion we have reached in the language of the opinions. See Ex parte Pesnell, 1940, 240 Ala. 457, 199 So. 726; Department of Industrial Relations v. Pesnell, 1940, 29 Ala. App. 528, 199 So. 720, certiorari denied by United States Supreme Court, 313 U.S. 590, 61 S.Ct. 1113, 85 L.Ed. 1545; Barnes et al. v. Hall, 1941, 285 Ky. 160, 146 S.W. 2d 929; Miners in General Group et al. v. Hix et al., 1941, 123 W.Va. 637, 17 S.E. 2d 810; Dallas Fuel Co. v. Horne, et al., 1941, 230 Iowa 1148, 300 N.W. 303; Block Coal & Coke Co. et al. v. United Mine Workers et al., 1941, 177 Tenn. 247, 148 S.W. 2d 364, 149 S.W. 2d 469."

Walter Bledsoe Coal Co. v. Review Board (Indiana), 46 N.E. (2d) 477, 479.

The foregoing was quoted with approval by the Supreme Court of Oklahoma in *Board of Review v. Mid-Continent Petroleum Corporation,* ..... Okla. ....., 141 Pac. (2d) 69, 72, 73.

THE LABOR DISPUTE WAS IN ACTIVE PROGRESS AFTER THE DATES FOR SAILING HAD PASSED.

The Commission and the District Court found that there was an active labor dispute existing between appellants and employers at the opening of the season and that said dispute continued. (Tr. pp. 648, 716.)

Appellants assign error in these findings, and claim that if there was a labor dispute it was "not" in active progress after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay. The referee found that the dispute was not active after those dates. They are the dates fixed by the employers as the last dates for completion of arrangements for employment with respect to the respective operations. (Tr. Ex. I, p. 325.) On those dates the season had been open at Karluk 6 days, at Chignik 13 days and would not open at Bristol Bay for 1 day. In discussing this assignment of error we shall assume that a labor dispute existed and had existed from early March, 1940. (Tr. p. 272.)

Appellants adopt the referee's reasoning (Tr. p. 641 et seq.) which is that after those dates the dispute became dormant. That it was so treated by both parties. That no action was taken by either of them to resume negotiations.

We think the referee let the fundamental purpose of the provision "in active progress" escape him; that he confused negotiation with dispute.

Considered in the light of the provisions of the act and particularly of the purpose of the legislature to confine benefits to those unemployed through no fault of their own, it seems apparent that the activity which must exist is such as affects the unemployment of the claimant. That so long as a dispute is in such a relation to employment that it can and does keep a claimant who took part in it unemployed the dispute is active. If it is still potent as the cause of claimant's unemployment it is still active. As pointed out earlier in this brief (in discussing the reasons for amendment of Sec. 5(d) the words "in active progress" were inserted to prevent disqualification in cases where the dispute has been settled in such a way that it ceased to be the cause of claimant's unemployment. In the *Graham* case cited by appellants such a situation existed. The dispute was ended by settlement. The shop became A.F. of L. and the C.I.O. employees lost their employment by reason of the agreement of the employers to employ A.F. of L. members. The dispute, the Court properly held, had ceased to be in active progress because it was settled. It had nothing further to do with the unemployment of the claimants. The same reasoning applies in the Indiana Appeal Tribunal decision cited by appellants. (Br. p. 37.) In the *West Virginia Appeal Tribunal* decision the same principle applies. The dispute was settled. It was not because of the dispute that claim-

ant was unemployed. In the *Minnesota Appeal Tribunal* case the unemployment came about because of an order of the Court to sell assets and close the business. So far as the citation indicates the existence of the labor dispute had nothing to do with that order of sale, and nothing to do with the unemployment of the claimant.

The referee partly based his conclusion upon the possibility that the dispute would continue indefinitely, that "like Banquo's ghost or John Brown's soul" it might go marching on. The legislature provided against possible continuance of the dispute, by providing that disqualification should continue only eight weeks.

And another reason for the referee's conclusion was that "* * * the die was cast and the Rubicon crossed."

It is true that no settlement had then been reached. On the 10th day of April, 1940, the union rejected the employers' offer to operate under a memorandum binding them and the union to abide by the terms of such coastwise agreement as might be adopted in Seattle. (Testimony St. Sure, Tr. p. 355 et seq.) The employers did not close the door to further negotiation, but economic pressure forced them to refuse to operate without knowing that the outcome of those negotiations would be binding. They were forced to abandon operations. The situation from a legal standpoint is no different than if a lockout had occurred on the respective deadline dates. It is settled that in such a situation a labor dispute exists and continues for the duration of the lockout.

There is ample authority for this statement. Among them are the following:

> "The merits of the dispute, the cause of the dispute, and the kind of dispute; i.e., whether a strike or a *lockout* are not proper questions for consideration. The sole thing to be determined is whether or not an individual's unemployment is due directly to the existence of a labor dispute; and if so determined whether he might be extended the exemption allowed under the subsections following 6D. (Same as Alaska's Section 5(d).)"
>
> Appeal Tribunal Decision No. AT-418, 10-14-40, C.C.H. Florida P. 1980.01.

Under facts in most respects similar to those at bar the Mississippi Board of Review denied benefits:

> "Stoppage of work at a mill is due to a labor dispute where mill was shut down under the following circumstances: (1) Mill operators submitted to union representatives proposals which they claimed had to be adopted if mill was to continue operations; if not adopted operators claimed it would be financially impossible to operate; (2) Union rejected proposals by unanimous vote; (3) Mill was shut down and workers locked out on first normal working day after union rejection.
>
> While financial condition of company caused the making of proposals, *it did not cause the mill to shut down.* It was the union's rejection and subsequent lockout by the owners which caused the shut down."
>
> Digest Board of Review decision, 1-BR-39, P-H U.I.S. Miss. § 27,821.3.

In the *North River Logging Company* case a dispute arose between employer and employee regarding overtime work. Crews were ordered to report for work Saturday on a straight time basis and were told that if they would not work on that basis the company would shut down operations for the rest of the year. The men refused to work. On the following Monday the men reported for work. They found the camp shut down. Settlement was reached slightly over a month later. The men applied for unemployment benefits covering the interval. Benefits were denied, because the unemployment was due to a labor dispute.

The Court said:

> "So the question for determination, as it finally resolves itself, is whether or not a lockout is a labor dispute in contemplation of Rem. Rev. Stat. Supp. § 9998-105(e). For it is clear that the shut down from Sept. 9 to October 14th was a lockout in the generally accepted definition of the terms: A suspension of operations by the employer resulting from a dispute with his employees over wages, hours or working conditions. *That a lockout* is a labor dispute in contemplation of the unemployment compensation act we think equally clear for several reasons: * * *".
>
> *In re North River Logging Co.,* 15 Wash. (2d) 204, 130 Pac. (2d) 64, 65-66.

In presenting its reasons for holding that a lockout is a labor dispute the Court notes that the English decisions are uniform in holding that a lockout is a labor dispute in contemplation of the national insurance acts.

Alaska's statute recognizes a lockout as a labor dispute in Section 5(c)(2)(A), "If the position offered is vacant due directly to a strike, lockout or *other* labor dispute."

The Alaska statute does not, as the statutes of some states do, relieve a claimant from disqualification if his unemployment is due to a lockout. There is nothing in our statute that indicates a purpose to distinguish between kinds of labor disputes in their effect to disqualify claimants from participating in benefits.

The Iowa statute is very similar to that at bar. As particularly pertinent to this phase of our discussion we quote again the last half of our quotation from *Dallas Fuel v. Horne,* supra:

> "[3] It is our conclusion that where action is taken by *either a labor organization or employer* that has a bearing as to a controversy as to wages or conditions of employment a labor dispute has developed."

In the face of the foregoing decisions it can hardly be said that the Commission did not have substantial evidence to support its finding that the labor dispute continued after the so-called deadline dates.

The Commission is a practical body. Its function is to examine the facts and apply the law.

One of the purposes of the law, as set out in the "Declaration of Territorial Public Policy" is to relieve against the evils flowing from *involuntary unemployment* and a means of relief issue of unemployment reserves "*for the benefit of persons unemployed*

through no fault of their own". We contend that to apply the phrase "in active progress" as the appellants would apply it is to nullify the very purpose of the act. Here a labor dispute had developed. There was a job—a very large job. Establishments were built, machinery installed. Fish were in the ocean to be taken. Employers had expended hundreds of thousands of dollars in preparation for the season's work. They intended to operate and wished to do so. Workers only were lacking. Employees were ready to work if their conditions were met, but employers claimed it was financially unprofitable to meet those conditions. Prior to the opening of the season claimants were ineligible to benefits because the season had not begun. (Section 2(c), Appendix p. ii.) Negotiations continued as to Chignik and Karluk (Central Alaska) for approximately a week after the season opened. Each party to those negotiations was within its legal right in refusing to agree to the demands of the other and the Commission's function is not to determine which party should have yielded nor whether some middle course should have been taken, but there can be no question from the evidence that the unemployment of the claimants during the first week of the seasons at Chignik and Karluk was due to the labor dispute then existing. That reason for their unemployment did not cease on the "deadline" dates. It continued during all the remainder of the season. On those dates and thereafter the men were voluntarily unemployed within the reasoning of the *Bledsoe Coal* case quoted above and the cases cited therein. They were not involuntarily unemployed. The following language of the Court in

Bodinson Mfg. Co. v. California Employment Commission (17 Cal. (2d) 321, 328), applied there to refusal of workers to cross a picket line, is equally applicable here.

> "Their (claimants') own consciences and faith in their union principles dictated their action. This choice is one which members of organized labor are frequently called upon to make, and *in the eyes of the law this kind of choice has never been deemed involuntary.*"

Had the referee found that negotiations continued after the deadline dates he would have found the labor dispute active, but the fact that one of the disputants may have said to the other "will you concede this or that", and the other refused or made some counter suggestion would not have made the dispute any more active or effective to prevent unemployment than it actually was so long as an agreement was not reached.

To adopt the construction of the referee would defeat the very purpose of the disability section of the Act indicated in *Mid-Continent Petroleum* case, supra, as,

> "* * * to withhold benefits of the act from those who bring about their own unemployment by bringing about or participating in a labor dispute",

and it would defeat the duty of the Commission as set forth in the *Chrysler* case, supra, to see that:

> "None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute, * * *"

In this connection we may add that the record shows that the claimants definitely considered their chances of getting unemployment benefits in connection with their decision as to whether they would sign an agreement with the employers.

Not only did the union post notices in its hall that members not working could file an application for unemployment compensation (testimony Rendon, Tr. p. 599) but on May 29, 1940, the union in San Francisco was considering whether it should "go on record to sign the 1939 agreement offered by the industry under protest" or insist upon the 1939 San Francisco agreement (which was more favorable to the union than that offered by the industry). (Referee's Findings of Fact, Tr. p. 614; Testimony of Sam Young, Tr. p. 208.) The minutes of the meeting (Ex. 15, Tr. p. 211) contain the following:

> "Report of the Negotiating Committee and Coastwise Negotiating Committee was discussed at length.
>
> Brother George Anderson discussed the Executive Board recommendations at length, and assured us that we will have a very good chance of getting our unemployment insurance, as we are having a hearing on this very soon; and the hearing will take about 8 or 10 days. Then this material has to be sent to Alaska and then rediscussed and sent back here."

Fortified by this advice the union decided then, as all the testimony on the subject indicates it had done before, as stated by its witness John W. Acosta (Tr. p.

189), that it "didn't intend to lose absolutely nothing from the 1939 (San Francisco) Agreement".

At page 39 et seq. of appellants' brief they allege that their unemployment was not "due" to the labor dispute but was due to the seasonal nature of the industry, and they cite a number of administrative body decisions to support their position. Some of these citations have doubtless been superseded in the loose leaf services from which they are cited. We have not been able to find them.* With those that we have found we do not disagree. Not one was directly applicable to the facts which are here presented. They all were decided upon a factual situation similar to that which appellants quote, in which for some reason not connected with, or occurring before a labor dispute, an employee is discharged or laid off temporarily. In such cases it was held that the employee's unemployment was not due to the labor dispute.

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*One of these is *Michigan Unemployment Comp. Comm.* Ref. Dec. No. 1589, C.C.H. Mich. #8049.06, cited at page 42 of appellants' brief. Since no report of the facts can be found, the decision can have no weight as a precedent. However, on appellants' own statement, the decision is not in point. The Michigan Act, unlike the Alaska Act, has no provision relative to seasonal employment. "The payment of benefits to * * * individuals [engaged in seasonal employments] is therefore governed by the same provisions which regulate the payment of benefits to other individuals." (C.C.H. Unemployment Insurance Service (Mich.), par. 2000.) Accordingly it appears that compensation in the cited case was payable because the unemployment was due to and occurred in the seasonal lay-off. Under the Alaska Act no compensation is payable for unemployment during the seasonal lay-off. (Section 2(c), appendix p. ii.) Here the Commission found upon uncontroverted evidence that the appellants' unemployment in 1940 *was due to the labor dispute in 1940.*

The authorities we have presented under the heading "Meaning of the Term 'Labor Dispute'" seem to us to afford a complete answer to the contention that the appellants were not engaged in a labor dispute because they lost their employment at the end of the 1939 season. To constitute a labor dispute it is not necessary that a common law relation of employer and employee exists between the disputants. Some cases contain expressions that indicate that such a relation is necessary to a strike, but we think the weight of the law otherwise; that the true rule is the one adopted in the *Sandoval* case, *Barnes v. Hall, Dallas Fuel v. Horne,* cited supra, namely, in the application of unemployment compensation acts neither the Courts nor the Commissions are held to the common law definitions of employer and employee.

In cases of seasonal employment there is at least a suspended employer-employee relationship. In a seasonal industry benefits are paid, under the Alaska statute (a number of the states have no provisions relating to seasonal employment) based upon the season of employment and are not allowed during the season of unemployment. That season is treated as if it did not exist. We submit that as applied to seasonal industries there is no discharge of the employees at the end of the season. Both they and the employer expect to resume relations at the opening of the season. At page 594 of the transcript Vincent Rendon testified:

"Q. What do you do between the time you usually come back from Alaska and the time you go back to Alaska next year?

A. Well, I wait for the season again.

Q. You don't do any work at any time?

A. Well, I can't find any job here.

Q. What did you do between, say August of last year and May of this year?

A. Well, I hung around our union hall."

That, we assume, is typical of the situation of the men during the season of unemployment. They depend upon and expect to go to work for the canneries when the season opens. They then report for work and in the absence of a labor dispute the union assigns them to some cannery. They are neither discharged at the end of the season nor formally hired at the beginning of the next season. (Testimony Rendon, Tr. p. 597.)

THE FINDINGS OF THE DISTRICT COURT AND THE COMMISSION WERE SUFFICIENT.

In their specification of error No. VII appellants propound a number of questions upon which it claims the Commission should have but did not make findings, and assigns error because the District Court found (Finding No. 11) that the Commission's conclusions of law and decision were supported by its findings and the evidence.

Both findings were correct. The Commission was not required to find the evidentiary facts leading to the ultimate facts that there was a labor dispute, that

claimants' unemployment was due to that labor dispute and that the labor dispute continued (was in active progress). That findings of fact should not contain evidentiary facts is elementary.

> "An ultimate fact is the final or resulting fact reached by deduction from the detached or successive facts in evidence,—the fact which is fundamental and determinative of the whole case. It has been many times correctly observed that it is ultimate facts which a court is required to find, and *that the court is not required, nor is it proper to set out the evidence or probative facts.*"
>
> *Bancroft's Code Practise and Remedies,* Part VI, Chap. XXV, Sec. 1685, p. 2164.

In specifications of error Nos. II and IV appellants assign error because certain findings of the District Court were immaterial.

Even if the findings are immaterial that fact is also immaterial, provided sufficient findings remain.

> "Obviously, however, a judgment may not be set aside because of an immaterial variance between the findings and issues, because the findings do not conform to immaterial issues in the pleadings, or where the facts asserted to be without the issues are alleged in the appellant's pleading." (Id. Section 1690, p. 217.)

CONCLUSION.

This appellee respectfully submits that the record shows no error and that the judgment of the District Court should be affirmed.

Dated, San Francisco,
June 5, 1944.

E. COKE HILL,
Attorney for Appellee
Alaska Unemployment Compensation Commission.

(Appendix Follows.)

Appendix.

Appendix

STATUTES.

Provisions of the Unemployment Compensation Law of Alaska which will be referred to in this brief as applicable to this case are as follows:

> "*Declaration of Territorial Public Policy.* As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:
>
> Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to

be used for the benefit of persons unemployed through no fault of their own."

"*Section 2—Definitions* * * *

(c) provided, however, that if an individual has earned wages only in a seasonal industry, his claim shall not be valid until the beginning of the claimant's next recurring seasonal period."

"*Section 4—Benefit Eligibility Conditions.* An unemployed individual shall be eligible to receive benefits with respect to any week *only* if the Commission finds that:

(a) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the commission may prescribe, except that the commission, may, by regulation waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this Act.

(b) He has made a claim for benefits in accordance with the provisions of Section 6(a) of this Act.

(c) He is able to work, and is available for work.

(d) He has been unemployed for a waiting period of two weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was eligible for benefits in all respects, except for the requirements of this subsection, of subsection (d) of Section 3 and of subsection (e) of Section 5.

(e) He has during his base period earned wages for employment by employers equal to not less than twenty-five times his weekly benefit amount." * * *

"*Section 5.—Disqualification for Benefits.* An individual shall be disqualified for benefits:

(a) For the week in which he has left his most recent work voluntarily without good cause, if so found by the Commission, and for not more than the five weeks which immediately follow such week as determined by the Commission according to the circumstances in each case.

(b) * * *

(c) If the Commission finds that he has failed, without good cause, * * * or to accept suitable work when offered to him * * *

(1) * * *

(2) * * *

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment, and

(2) He does not belong to a grade or class of workers out of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs any of whom are participating in or directly interested in the dispute;"

"*Section 6.—Claims for Benefits.*

(a) 'Filing.' Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. * * *

(i) 'Court Review.' Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. In such action, a petition which need not be veri-

fied, but which shall state the grounds upon which a review is sought, shall be served upon the Commission, or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with said Court all documents and papers and a transcript of all testimony taken in the matter, together with the Commission's findings of fact and decision therein. The Commission may also, in its discretion, certify to such court questions of law involved in any decision. *In any judicial proceedings under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said Court shall be confined to questions of law.* Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all civil cases except cases arising under the Workmen's Compensation Law of this Territory. An appeal may be taken from the decision of the United States District Court as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding the Commission shall enter an order in accordance with such determination. A petition for judicial review shall

not act as a supersedeas or stay unless the Commission shall so order."

"Section 7.—Contributions.

(a) 'Payment.'

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulation as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) * * *

(b) 'Rate of Contribution.' Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) 1.8 per centum with respect to employment during the calendar year 1937.

(2) With respect to employment after December 31, 1937, 2.7 per centum.

(c) 'Study of Experience Rating.' The Commission shall investigate and study the operation of this Act and the actual experience hereunder in the light of pertinent economic factors with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer and would encourage stabilization of employment.

Section 12. Territorial Employment Service. The Alaska Territorial employment service is hereby established under the Unemployment Compensation Commission. The Commission, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act and for the purposes of performing such functions as are within the purview of the Act of Congress entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes', approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c) as amended, hereinafter referred to as the 'Wagner-Peyser Act'. The provisions of the said Act of Congress are hereby accepted by the Territory, and the Unemployment Compensation Commission is hereby designated and constituted the agency of this Territory for the purposes of said Act. All moneys received by this Territory under the said Act of Congress shall be paid into the unemployment compensation administration fund and shall be expended solely for the maintenance of the Territorial system of public employment offices."